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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,359	06/26/2003	Monika D. Kinstler	EH-10935 (03-361)	7822
34704	7590	09/29/2005	EXAMINER	
BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			JOHNSON, JONATHAN J	
			ART UNIT	PAPER NUMBER
			1725	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/608,359

Applicant(s)

KINSTLER, MONIKA D.

Examiner

Jonathan Johnson

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1725

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☒ Newly proposed or amended claim(s) 20 and 21 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 20 and 21.  
Claim(s) rejected: 1-7 and 13-19.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
SEE CONTINUATION SHEET.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.



Jonathan Johnson  
Primary Examiner  
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**CONTINUATION OF ITEM 11**

Applicant argues Reeves does not teach the claim 1 limitation of "a braze paste." The examiner disagrees. During patent examination, the pending claims must be "given the broadest reasonable interpretation." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). In the instant case, while the examiner agrees with applicant that Reeves' brazing paste (col. 6, ll. 49-50) has been hardened (col. 6, ll. 53-60) and that the brazing paste may be presintered (col. 6, l. 59-60), it is the examiner's position that, in applying the Prater test by giving the claim its broadest reasonable interpretation, the Reeves' hardened brazing paste can be construed to meet the claim 1 limitation of "brazing paste." That is, merely because the brazing paste has been hardened, does preclude it from being construed to be a brazing paste.

Applicant next argues that Reeves does not teach the claim 1 limitation of "repairing at least one crack." The examiner disagrees. As stated in the previous office action, Reeves teach sealing the tips of the turbine blades worn away from hot gas erosion. Implicit in this teaching of hot gas erosion is the formation of microcracks. When the examiner has reason to believe that functional language asserted to be critical for establishing novelty in claimed subject matter may, in fact be an inherent characteristic of the prior art, the burden of proof is shifted to the applicant to prove that the subject matter shown in the prior art does not possess the characteristics relied upon. *In re Fitzgerald et al.* 205 USPQ 594.

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In any event, the examiner cites US 6,629,368 (Schnell) to teach a relationship between hot gas and cracking as Schnell states (col. 3) "During service the article is subjected to the hot environment of the gas turbine which leads to the deleterious effect of cracks and gaps in the surface of the article." That is, Schnell explains that the cracks and gaps produce the erosion caused by the hot gas.

With respect to applicant's arguments about adhesive covering the cracks, the examiner notes that this is not the only way Reeves describes applying the hardened braze paste. Reeves also explains that the hardened braze paste can be applied directly using a cold pressing technique (col. 6, ll. 57-60).

  
JONATHAN JOHNSON  
PRIMARY EXAMINER